

# **EXHIBIT “A”**

## License Agreement Google Enterprise Products

This License Agreement for the Google Enterprise Products (the "Agreement") is made and entered into by and between Google Inc. ("Google") and Market America, Inc. ("Customer"). Customer may also be referred to herein as "You" or "Your." This Agreement and the corresponding purchasing document by which You order certain Products ("Order Form") from LTech Consulting, LLC, a Google authorized reseller ("Reseller") set forth the terms and conditions under which You may license and use such Products. The Order Form is a purchasing document provided by Reseller. The Order Form is subject to, and is governed by, this Agreement. This Agreement will be effective as of the date each party hereto has executed the Agreement (the "Effective Date"). If you are accepting on behalf of your employer or another entity, you represent and warrant that: (i) you have full legal authority to bind your employer or such entity to these terms and conditions; (ii) that you have read and understand this Agreement; and (iii) that you agree, on behalf of the party that you represent, to this Agreement. If you don't have the legal authority to bind, please do not sign this Agreement.

### 1. GOOGLE LICENSE

**1.1 LICENSE GRANT.** Subject to the terms and conditions of this Agreement and the Order Form, if applicable, and in consideration of Your payment of all applicable fees and taxes as set forth in the Order Form ("Fees"), Google grants to You (and You agree to comply with) a perpetual, non-sublicensable, non-transferable, non-exclusive, limited license to use: (i) certain Google proprietary computer software identified in the Order Form in binary executable form only (the "Software"), that is installed in certain Google proprietary computer hardware (the "Hardware") and (ii) certain Google proprietary documentation in the form generally made available by Google to its customers for use with the Products (the "Documentation"). The Software and Hardware are collectively referred to herein as the "Appliance." The Appliance and Documentation are collectively referred to herein as the "Product." A license key that enables the Software may be required and, if so, Google (or Reseller) will forward the key to You electronically. Your use of the Products shall be restricted to creating an index of and searching for content owned by You or lawfully licensed to You, whether located on servers that are owned and operated by You, or operated on your behalf. You may allow your Affiliates (as defined below), agents and contractors to use the Appliance for the purposes authorized in this Agreement, subject to the terms of this Agreement. The right to search and access content made available by the Appliance is also hereby licensed to Your authorized end-users. You agree to be responsible for the acts and/or omissions of any such parties in breach of the terms set forth herein. The license grant set forth herein is further limited to indexing the number of Documents specified on the Order Form.

**1.2 LICENSE RESTRICTIONS.** The license set forth herein is further restricted as follows: You agree not to, or to allow others to: (i) adapt, alter, modify, decompile, translate, disassemble, or reverse engineer the Product or any component thereof, including without limitation, the source code and any other underlying ideas or algorithms of the Software (except to the extent applicable laws specifically prohibit such restriction); (ii) alter the number of Documents authorized for Your use; (iii) create license keys that enable the Software; (iv) copy the Software except as provided in Section 4; (v) use the Product for High Risk Activities, as defined below; or (vi) transfer, sublicense, loan, sell, lease or use for timesharing or service bureau purposes the Product or any component thereof. Further you agree to comply with all applicable export and reexport control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations ("ITAR") maintained by the Department of State. Specifically, You agree that You will not, directly or indirectly, sell, export, reexport, transfer, divert, or otherwise dispose of the Products, their software, or technology (including products derived from or based on such technology) received from Google under this Agreement to any destination, entity, end user, or person prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations. You agree to indemnify Google, to the fullest extent permitted by law, from and against any fines or penalties that may arise as a result of Your breach of this provision. This export control clause shall survive termination or cancellation of this Agreement.

**1.3 BACK-UP AND DEVELOPMENT USE.** In the event You acquire an Appliance identified on an Order Form as a Hot Back-up and/or Development Appliance ("Restricted Use Appliance"), Your license to use the Restricted Use Appliance is further restricted as follows: (i) You may use the Restricted Use Appliance for the purpose of acting as a 'hot' back-up in the event a similarly configured Appliance for which You have obtained a license from Google pursuant to an Order Form (the "Primary System"), is disabled due to a critical Hardware or Software failure of the Primary System; (ii)

You may use the Restricted Use Appliance as a platform and test environment to assist in Your efforts in designing, developing and testing applications for use in conjunction with Google Enterprise Products; and (iii) You may use the Restricted Use Appliance provided hereunder to index the same material as the Primary System, but it may not be used in any commercial or production use. For the sake of clarity, no searches may be conducted nor any results served with the Restricted Use Appliance while the Primary System is operational, with the exception of incidental searches conducted by You for testing purposes only. In the event of a Primary System critical failure, You may use the Restricted Use Appliance acquired pursuant to this Agreement to create an index of and search for content located solely on servers that were previously authorized to be indexed by the Primary System and You agree that upon restoration of the Primary System, You will cease all such searching by the Restricted Use Appliance, unless a subsequent critical failure of the Primary System occurs.

**1.4 THIRD PARTY COMPONENTS.** Any third party component embedded, included or otherwise provided for use with the Products may only be used in conjunction with such Products ordered under the Order Form, and such use shall be subject to all the terms and conditions of this Agreement. Notwithstanding the foregoing, to the extent that the Products include some components that are governed by open source licenses including provisions prohibiting their distribution by You under this Agreement, those components are instead governed solely by the respective appropriate licenses. To the extent Products include some components covered by open source licenses requiring the provision of corresponding source code for those components, Google hereby offers the provision of such source code consistent with such licenses.

**2. OWNERSHIP.** For purposes of this Agreement, "Intellectual Property Rights" means any and all rights existing from time to time under patent law, copyright law, semiconductor chip protection law, moral rights law, trade secret law, trademark law, unfair competition law, publicity rights law, privacy rights law, and any and all other proprietary rights, and any and all applications, renewals, extensions and restorations thereof, now or hereafter in force and effect worldwide. All ownership rights, title, and Intellectual Property Rights in and to the Products shall remain in Google and/or its licensors, except that title to the Hardware shall pass to You upon receipt of all Fees by Google. Your title shall be further subject to Your return of such Hardware pursuant to Section 5 of this Agreement. All ownership rights, title, and Intellectual Property Rights in and to the content accessed through the Appliance are the property of the applicable content owner (which may include Customer and/or its partners), and the applicable content owner (which may include Customer and/or its partners, as the case may be, shall retain all right, title and interest in and to such content.

~~Any trade names, trademarks, service marks, logos, trade dress, and any other distinctive or proprietary symbols, labels, designs or designations ("Brand Features") as well as any copyright or other proprietary notices appearing on or in the Product shall be maintained and shall not be removed, modified or altered by You. At Your option, the search box (or other means used by an end user to enter a search query) and/or results pages may conspicuously display an unaltered graphic in the form provided by Google for the purpose of identifying that the search function is provided by Google and may link to the Google site located at: [www.google.com](http://www.google.com) (or such other URL as may be updated by Google). Such graphic may be accessed at: [www.google.com/stickers.html](http://www.google.com/stickers.html) (or such other URL as may be updated by Google) and all use of such graphic shall be subject to Google's then current Brand Feature guidelines and policies in effect. Each party agrees not to challenge or assist others to challenge the other party's Brand Features or registration thereof (except to protect such party's rights with respect to its own Brand Features) nor shall either party attempt to register any Brand Features that are confusingly similar to those of the other party. Except as provided for pursuant to this Agreement, neither party shall acquire any right, title or interest in or to the other party's Brand Features.~~

**3. DELIVERY.** The Products shall be delivered by the shipping method indicated on the Order Form. Unless otherwise specified in an applicable Order Form, all subsequent supplemental increases or modifications to Your order hereunder shall be deemed to be delivered under the same terms as the original license. Google shall bear all risk of loss, theft or damage during transit. You agree that at the time of Your receipt of any Product, You shall bear all risk of loss, theft or damage of any kind to such Product and that your failure to obtain insurance at the time of Your receipt of such Product will be at Your own risk without liability of any kind to Google.

**4. TECHNICAL SUPPORT SERVICES.** In consideration of Your payment to your distributor, Reseller or Google (as may be applicable) of all Fees, your distributor, Reseller and/or Google, as set forth in the Order Form (as may be applicable) shall provide technical support services in accordance with the Google's then current Technical Support Services Guidelines, the current version of which are attached hereto as Exhibit A and incorporated herein by reference (the "TSS Guidelines"), for the Products identified in the Order Form for the time period set forth in the Order Form. The TSS Guidelines may be updated from time to time by posting a new version to the following URL: <http://support.google.com/enterprise/terms> (or such other URL as may be updated by Google). If the updated TSS

Guidelines will result in a material adverse impact on Customer, then Customer will remain governed by the TSS Guidelines attached to this Agreement. Upon purchase of Customer Appliance with premium support, Google will provide to Customer contact information for accessing Google directly for support for serving Down / Severity Zero issues should assistance be required after Reseller's support hours.

**5. TERM AND TERMINATION.** Subject to Your payment of all Fees, the term of the license granted herein for any Product shall commence upon the date of shipment by Google or its designated agent ("Shipment Date") and may be terminated as set forth herein. A party may, by written notice of default to the other party, terminate this Agreement, in whole or in part, (a) if the other party materially breaches this Agreement and/or the Order Form, and the breaching party does not cure such material breach within thirty (30) calendar days after receipt of written notice of such breach; or (b) immediately following the failure to resolve the suspension of business, insolvency, institution of bankruptcy, liquidation proceedings by or against the other party, appointment of a trustee or receiver for either party's property or business, or any assignment, reorganization or arrangement by either party for the benefit of its creditors. Google may immediately terminate this Agreement, in whole or in part, if You are in breach of Section 1.2, (License Restrictions), Section 2 (Ownership) or Section 6 (Confidential Information); or You are in material breach of this Agreement and/or the Order Form more than twice notwithstanding any cure of such breaches.

In the event of termination of this Agreement, all licenses, and any other rights and services provided by Google to You as set forth in this Agreement, shall cease immediately. If this Agreement is terminated for Your material breach, You must immediately return the Product to Google via Google's authorized return shipment process for receipt by Google, at which time Your title in the Hardware shall revert to Google. Except as set forth herein, in the event of termination of this Agreement, You may retain possession of the Hardware, provided that all Software is erased in compliance with the process as instructed by Google, and You will provide written certification that You have properly completed such process within ten (10) business days of such termination.

Termination of this Agreement, Order Form or any license shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve You of Your obligation to pay all fees that have accrued or are otherwise owed by You.

**6. CONFIDENTIAL INFORMATION.** In connection with performance of its obligations hereunder, a party may have access to information that the other party considers confidential and/or proprietary ("**Confidential Information**"). Confidential Information shall be limited to pricing, the terms of this Agreement and the discussions, negotiations and proposals related thereto and other information clearly and conspicuously identified as "confidential". Notwithstanding the foregoing, Google acknowledges that Your marketing plan, client list, distributor list, internal business records and communications, genealogy reports, trade secrets, software programs, employee information and records, product sources, product pricing, product suppliers, and legal and accounting documents are Confidential Information. In addition, notwithstanding the foregoing, you acknowledge that the following is Google's Confidential Information: Google's trade secrets, financial information, including pricing, technical information, including research, development, procedures, algorithms, data, designs, and know-how, business information, including operations, planning, marketing interests, and products and other issues relating to the Product. You acknowledge that the source and object code of the Software remains a confidential trade secret of Google and/or its licensors and that You are not entitled to review either the object code or the source code of the Software for any reason at any time. Each party agrees to hold the other party's Confidential Information in confidence for a period of five (5) years from the date of disclosure. Neither party will disclose or cause to be disclosed any Confidential Information of the other, except to those employees, agents, representatives, or contractors of the parties who require access to the Confidential Information to perform under this Agreement and who are bound by written agreement not to disclose third-party confidential or proprietary information. Furthermore, each party agrees to be responsible for any act and/or omission of any employees, agents, representatives, or contractors in breach of this Section. Each party shall protect the Confidential Information disclosed by the other party by using the same degree of care, but no less than a reasonable degree of care, that it uses to protect its own confidential information of a like nature to prevent its unauthorized use, dissemination or publication to any unauthorized third parties. A party's Confidential Information shall not include information that: (i) is or becomes publicly available through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure and was not obtained either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on Recipient's disclosure; or (iv) is independently developed by the other party without violation of this Agreement. Each party may disclose Confidential Information solely as needed to comply with a court order, subpoena, or other government demand (provided that it first notifies and gives the disclosing party the opportunity to challenge such court order, subpoena, or government demand). Each party acknowledges that damages for improper disclosure of Confidential Information may be irreparable;

therefore, the injured party is entitled to seek equitable relief, including temporary restraining order(s) or preliminary or permanent injunction, in addition to all other remedies, for any violation or threatened violation of this Section 6, Section 1.2 or Section 2. In the event that You return the Appliance to Google, You will use commercially reasonable efforts to remove Your Confidential Information on the Appliance before returning the Appliance to Google. The terms contained in this Section 6 shall survive termination of this Agreement.

## 7. LIMITED WARRANTY.

**7.1 Limited Warranty – Hardware and Software.** Google warrants to Customer that (i) Hardware will be free from defects in material and workmanship, and will substantially conform to all material aspects to the Administration Console Help Center documentation ("Specifications") for a period of ninety (90) days from the later of the installation of the Products or ten (10) days following the Shipment Date, and (ii) Software will substantially achieve the functionality described in the Specifications for a period of ninety (90) days from the date of shipment to Customer. Google's entire liability and Customer's sole and exclusive remedy with respect to breach of this warranty will be at Google's option, either (a) repair of the Product in accordance with Google's TSS Guidelines or (b) replacement of the defective component or entire Appliance, as applicable; or (c) refund of the purchase price paid for the Appliance.

**7.2 Extended Limited Warranty – Hardware.** Provided that Customer purchases Premium Support in connection with the Product, Google warrants to Customer that Hardware will be free from defects in material and workmanship, and will substantially conform to all material aspects to the Specifications starting on the date ninety-one (91) days from the later of the installation of the Products or ten (10) days following the Shipment Date and continuing until the end of Customer's initial Premium Support term. Google's entire liability and Customer's sole and exclusive remedy with respect to breach of this warranty will be at Google's option, either (a) repair of the Product in accordance with the TSS Guidelines; or (b) replacement of the defective component or entire Appliance, as applicable.

**7.3 Exclusions.** The limited warranties set forth in Sections 7.1 and 7.2 above will not apply to defects or errors in Product or Software that are caused by: (i) Customer's failure to follow Google's environmental, installation, operation or maintenance instructions or procedures in the Specification; (ii) Customer's mishandling, abuse, misuse, negligence, or improper storage, servicing, or operation of Product (including without limitation use with incompatible equipment); (iii) modifications, repairs or improper installation not made by Google; or (iv) power failures, surges, fire, flood, accident, actions of third parties or other like events outside Google's reasonable control. Without limiting the generality of the exclusions set forth in this Section 7.3, Google does not warrant that the operation of the Software will be error-free or uninterrupted.

**7.4 Disclaimer.** EXCEPT AS SPECIFIED IN THIS SECTION, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, ARE HEREBY DISCLAIMED EXCEPT TO THE EXTENT THAT THESE DISCLAIMERS ARE HELD TO BE LEGALLY INVALID. GOOGLE MAKES NO WARRANTIES OR REPRESENTATIONS WITH RESPECT TO ANY THIRD PARTY SOFTWARE PROVIDED AS PART OF, OR IN CONNECTION WITH, PRODUCT. IN ADDITION, GOOGLE EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN CUSTOMER WITH RESPECT TO PRODUCT OR ANY PART THEREOF. THE PRODUCT AND SERVICES ARE PROVIDED BY GOOGLE AND ITS LICENSORS ARE OTHERWISE PROVIDED "AS IS". GOOGLE AND ITS LICENSORS DO NOT WARRANT THAT THE PRODUCT OR ANY PORTION THEREOF, ARE ERROR OR BUG FREE, OR THAT YOUR USE OF THE PRODUCT OR SERVICES WILL BE UNINTERRUPTED. GOOGLE AND ITS LICENSORS ASSUME NO RESPONSIBILITY FOR THE PROPER INSTALLATION AND USE OF THE PRODUCT. GOOGLE AND ITS LICENSORS MAKE NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY THE PRODUCT. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IN THAT EVENT, TO THE EXTENT PERMISSIBLE, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF SHIPMENT OF THE APPLICABLE PRODUCT. THE PRODUCT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USES SUCH AS THE OPERATION OF NUCLEAR FACILITIES, AIR TRAFFIC CONTROL OR LIFE SUPPORT SYSTEMS, WHERE THE FAILURE OF THE PRODUCT COULD LEAD TO DEATH, PERSONAL INJURY, OR ENVIRONMENTAL DAMAGE ("HIGH RISK ACTIVITIES").

**8. LIMITATION OF LIABILITY.** EXCEPT FOR CUSTOMER'S BREACH OF ANY LICENSE IN THIS AGREEMENT OR ANY AMOUNTS PAYABLE TO THIRD PARTIES PURSUANT TO THE PARTIES' INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT WILL EITHER PARTY OR GOOGLE'S LICENSORS BE LIABLE (i) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST DATA, LOST PROFITS, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER CAUSED (INCLUDING BUT NOT LIMITED TO USE, MISUSE, INABILITY TO USE, OR INTERRUPTED USE) AND UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO CONTRACT OR TORT AND WHETHER OR NOT EITHER PARTY WAS OR SHOULD HAVE BEEN AWARE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGE REGARDLESS OF WHETHER ANY REMEDY SET FORTH IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE; OR (ii) FOR ANY CLAIM ATTRIBUTABLE TO ERRORS, OMISSIONS, OR OTHER INACCURACIES IN THE PRODUCT OR DESTRUCTIVE PROPERTIES OF THE PRODUCT. IN NO EVENT SHALL GOOGLE'S AND/OR ITS LICENSORS' TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER UNDER THE ORDER FORM GIVING RISE TO SUCH LIABILITY.

**9. U.S. Government Restricted Rights.** The Product is commercial within the meaning of the applicable civilian and military Federal acquisition regulations and any supplement thereto. If the user of the Product is an agency, department, employee, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Product, including technical data or manuals, is restricted by the terms, conditions and covenants contained in this Agreement. In accordance with Federal Acquisition Regulation 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement 227.7202 for military agencies, the use of the Software is further restricted by this Agreement.

#### **10. INDEMNIFICATION.**

**10.1** Subject to this Section 10 Google will defend, or at its option settle, any third party lawsuit or proceeding brought against You by a third party based upon a claim that the Appliance used in accordance with the Documentation and this Agreement infringes any copyright, trade secret, or trademark right of a third party ("IP Claim"), provided that You: (a) promptly notify Google in writing of any such IP Claim; (b) give Google sole control and authority to direct the investigation, preparation, defense and settlement of the IP Claim; and (c) assist and fully cooperate in the defense of same. Indemnification shall be provided for any claim covered under this Section 10 and shall be limited to payment of any final award of damages assessed against Customer resulting from such IP Claim, including any awarded costs, or any settlement amount agreed to by Google in writing. Google shall not settle any IP Claim brought against Customer pursuant to this Section 10 without Customer's prior written consent, which consent shall not be unreasonably withheld or delayed. Google will not be responsible for any settlement it does not approve in writing prior to such settlement.

**10.2** Following notice of an IP Claim or any facts which may give rise to such IP Claim, Google may, in its sole discretion and at its option, (a) procure for You the right to continue to use the Appliance, (b) replace the Appliance with a product of equal or higher quality and functionality, or (c) modify the Appliance to avoid the alleged infringement, in a manner that does not diminish the quality and functionality of the Appliance. If Google determines that it is not commercially reasonable to perform any of these alternatives, Google shall have the option to terminate the license for the allegedly infringing Appliance and refund the Appliance Fees actually paid by You through the date an IP claim occurs for such allegedly infringing Appliance, less depreciation for use assuming straight line depreciation over twenty-four (24) months.

**10.3** In no event will Google have any obligations under this Section 10 or any liability for any claim or action if the IP Claim is caused by, or results from: (a) Your combination or use of the Appliance with software, services, or products developed by You or third parties, to the extent that the IP Claim was caused by, or resulted from, such action, (b) modification of the Appliance by You or any third party, to the extent that the IP Claim was caused by, or resulted from, such action, (c) Your continued allegedly infringing activity after being notified thereof and after being provided modifications that, if used, would have avoided the alleged infringement, (d) Your use of the Appliance in a manner not in accordance with this Agreement or the Documentation, (e) Your use of other than Google's most current release of the Appliance, or either of the two (2) immediately prior versions, if the claim or action would have been avoided by use of one of such releases or revisions; provided that such releases or revisions were provided to you by Google. You will defend and indemnify Google, or at your option settle, in the same manner as provided in this Section 10, any claims made against Google for infringement based on any conduct by You described in subsections (a) through (e) of this subsection 10.3.

#### 10.4 THE FOREGOING STATES GOOGLE'S ENTIRE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT.

**11. Miscellaneous.** Nothing in this Agreement shall be construed to prevent Customer from independently developing or enhancing its own software, hardware, appliance or product, any of which may perform functions similar to those performed by the Software, Hardware, Appliance and Product; provided that Customer complies with the terms of this Agreement. With respect to either Google or Customer an "Affiliate" is any entity that directly or indirectly controls, is controlled by, or is under common control with such party. For these purposes, "control" includes control over greater than fifty percent (50%) of the voting rights or equity interests of a party. This Agreement is personal to You. Neither party may assign or otherwise transfer its rights or delegate its obligations under this Agreement or any Order Form, in whole or in part, without the prior written consent of the other party, provided, however, that Google may assign this Agreement in whole (and any Order Form, if applicable) to any Affiliate or in connection with a merger, consolidation, or sale or other disposition of all or substantially all of its assets. Notwithstanding the foregoing, You may assign Your rights or obligations hereunder to an Affiliate as defined above provided that (i) You notify Google in writing of such assignment, (ii) such Affiliate is not a competitor of Google, and (iii) such Affiliate shall expressly assume, in a writing promptly provided to Google, the performance of all of the terms of this Agreement. Any attempted assignment in derogation hereof shall be null and void. The parties agree that any Affiliate granted any rights herein shall be bound by the terms and conditions of this Agreement; that the entity executing any Order form shall be responsible for all actions of any of its Affiliates affecting any rights or obligations under this Agreement; and the cumulative use of the product by the entity executing any Order form and its Affiliates shall not exceed the licensed limits stated on each such Order form. The parties hereto are and shall remain independent contractors, and nothing herein shall be deemed to create an agency, partnership, or joint venture between the parties hereto. Both parties shall be responsible for performing their respective obligations as set forth herein. Upon termination, the following Sections of this Agreement will survive: 1, 2, 2, 5, 6, 7, 8, 9, 10, and 11. This Agreement and any claim or dispute of whatever nature arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Delaware and the federal U.S. laws applicable therein, without giving effect to any choice of law principles that would require the application of the laws of a different state. You and Google agree to submit to the personal and exclusive jurisdiction of the courts located in New Castle County, Delaware. The parties specifically exclude from application to this Agreement the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and remain enforceable between the parties. The failure of either party to act in the event of a breach of this Agreement by the other shall not be deemed a waiver of such breach or a waiver of future breaches. Any notice given under this Agreement shall be in writing and in the English language and shall be delivered by certified or registered mail, postage prepaid, return receipt requested. Notices shall be deemed given upon acknowledgment of receipt. All notices to Google must be sent to the attention of Google as set forth on the Order Form or to any other address Google specifies in writing, provided that a courtesy copy shall also be sent to the attention of the Google Legal Department for all legal notices. Notices to Customer shall be sent to the address set forth on the Order Form or to any other address You specify in writing, provided that a courtesy copy shall also be sent to the attention of Customer's Legal Department for all legal notices. Neither party shall be liable for failing or delaying performance of its obligations resulting from any condition beyond its reasonable control, including but not limited to, governmental action, acts of terrorism, earthquake, fire, flood or other acts of God, labor conditions, power failures, and Internet disturbances. This Agreement and related Order Form(s), and the terms or other provisions located at any Google uniform resource locators (URLs) referenced pursuant to this Agreement (which are all incorporated herein by reference), constitutes a complete, absolute integration and the entire agreement between the parties hereto relating to the subject matters of this Agreement, and supersedes all prior representations, proposals, discussions, and communications, whether oral or in writing, and all contemporaneous oral communications, and any terms contained in any related purchase order(s) or other documents pertaining to the subject matter of this Agreement shall be null and void. This Agreement may be modified only in writing signed by both parties. In the event of a conflict between the terms and conditions of this Agreement and any individual Google Order Form, that Order Form shall govern. The parties may treat faxed documents as originals; however, this shall not preclude either party from requiring the exchange of original signatures.

By signing this Agreement, each party represents and warrants that (i) it has read and understands the Agreement and agrees to be bound by its terms, and (ii) it has full power and authority to enter into the Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by persons duly authorized as of the date signed by Google below ("Effective Date").

Google, Inc.

By: \_\_\_\_\_

*David Girouard*  
David Girouard  
VP and General Manager, Enterprise  
Google, Inc.

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

2008.02.05

Date: \_\_\_\_\_

10:25:25 -08'00'

Market America, Inc.

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

*Martin Weissman*  
Martin Weissman

Title: \_\_\_\_\_

Executive Vice President

Date: \_\_\_\_\_

February 4, 2008



**GOOGLE SEARCH APPLIANCE™****(GB-1001/GB-5005/GB-8008)****TECHNICAL SUPPORT SERVICES GUIDELINES ("Guidelines")**

Google Confidential

**1. Definitions**

For the purpose of these Guidelines, the following capitalized terms will have the following meanings. All other capitalized terms not defined herein shall have the meaning set forth in the License Agreement for the Google Search Appliance and/or Order Form(s) which references these Guidelines (collectively, the "Agreement").

1.1. "Business Day" means either (a) for Appliances located in Europe, Middle East and Africa any day other than Saturday, Sunday or any UK Bank or Public Holiday; (b) for Appliances located in Japan any day other than Saturday, Sunday or any Japan Bank or Public Holiday; or (c) for Appliances located in all other countries, any day other than Saturday, Sunday or any U.S. Federal Holiday.

1.2. "Business Hour" means hour within Hours of Operation.

1.3. "Customer Contacts" means up to two (2) search system administrators or technical employees designated by Customer in writing who are allowed to contact Google for technical support.

1.4. "Feature Request" means any suggestion made by Customer to Google Technical Support Personnel that is unique to Customer Contact and is unrelated to a Fix, Severity 2 Request, Severity 1 Request, or Severity 0 Request. This includes requests by Customer Contact to incorporate a new feature or enhance an existing feature of the Software or Hardware. Feature Request is categorized as Severity 3 Request.

1.5. "Fix" means a correction, fix, alteration, Software Update, or workaround that solves a Severity 2 Request, Severity 1 Request, or a Severity 0 Request.

1.6. "Google Enterprise Support Site" (or "GES Site") means the site provided by Google to its customers including Documentation and online knowledge base (currently at <https://support.google.com/enterprise>, or such other URL as may be updated by Google from time to time).

1.7. "Google Enterprise Support Telephone" (or "GES Telephone") means the telephone number provided by Google to its customers for reporting Severity 0 Requests (or such other telephone number as may be updated by Google from time to time).

1.8. "Google Technical Support Personnel" means the Google representative responsible for handling technical support requests.

1.9. "Hardware" means the tangible components of the Appliance and includes the media on which the Software is pre-loaded (but excludes the modem available upon request to be shipped by Google for remote access to the Appliance).

1.10. "Hours of Operation" means either (a) for Appliances located in Europe, Middle East and Africa, 7:00 to 17:00 Greenwich Mean Time (GMT) on Business Days; or (b) for Appliances located in Japan, 7:00 a.m. to 5:00 p.m. Japan Time; or (c) for Appliances located in all other countries, 6:00 a.m. to 5:00 p.m. Pacific Time on Business Days.

1.11. "Hours of Telephone Support" means 6:00 a.m. to 5:00 p.m. Pacific Time on Business Days for Appliances located in the U.S., or 9:00 a.m. to 5:00 p.m. GMT for Appliances located in the United Kingdom.

1.12. "Remote Support" means a Customer-enabled modem (modem supplied by Google upon request) or SSH connection that provides access to the Appliance for Google Technical Support Personnel to diagnose and/or correct a Severity 2 Request, Severity 1 Request, or Severity 0 Request.

1.13. "Request" means any of Feature Request, Severity 2 Request, Severity 1 Request, or Severity 0 Request.

1.14. "Serving Downtime" means a failure of the Appliance to provide any search results to Customer and its end-users.

1.15. "Severity 0 Request" means any error, bug, or malfunction that causes Serving Downtime in the Appliance used in any commercial or production scenario and not used as a backup Appliance.

1.16. "Severity 1 Request" means an inquiry regarding any error, bug or malfunction that is not a Severity 0 Request and causes Serving Downtime in an Appliance not used in any commercial or production scenario

1.17. "Severity 2 Request" means any error, bug, or malfunction that is not a Severity 1 Request or Severity 0 Request, or a single question regarding features of the Hardware or Software, but excludes Feature Requests.

1.18. "Software" means certain proprietary computer programs in binary executable and script form only, as well as proprietary software data, as such may be modified from time to time, that is installed in the Hardware.

1.19. "Special Remote Support" means a connection to the Appliance other than customer-enabled modem (provided by Google upon request for remote access to the Appliance) or SSH. Special Remote Support requires prior approval by the Google Technical Support team.

1.20. "Support Period" means two years from the date of shipment of the Appliance by Google, unless otherwise specified in the Agreement.

1.21. "Update" means minor enhancements to functionality and modifications to the Software that are made generally available to customers as part of Technical Support Services during the Support Period.

## 2. Summary of Service Levels

Support Level	Standard Support	Premium Support
24x7 Pager Support for Sev0 Request	Not available	Included
Severity 0 First Response: Phone (During Hours of Telephone Support)	2 Business Hours	1 Business Hour
Severity 0 First Response: Web/Email	2 Business Hours	2 Business Hours
Severity 1 First Response	1 Business Day	1 Business Day
Severity 2 First Response	1 Business Day	1 Business Day
Severity 3 (Feature Request) First Response	2 Business Days	1 Business Day
Installation Service and Transfer of Knowledge for 5005 and 8008 Appliances	Included (if applicable)	Included
VPN Connect (Remote Support)	Purchase Separately	Included
Desktop Connect (Remote Support)	Purchase Separately	Purchase Separately
Disconnected Support	Purchase Separately	Purchase Separately

## 3. Google Responsibilities

3.1. Service Addenda. In addition to the terms described herein, Customer will be provided support for the Appliance at the level identified in the Agreement which corresponds with the following Addenda:

Support Level

Described In:

Confidential and Proprietary

Standard Support  
Premium Support  
Optional Support Offerings

Addendum A  
Addendum B  
Addendum C

If no support level is identified in the Agreement, Appliances shall be provided Standard Support. In addition to the two available Support levels, Customer may select any number of the optional offerings as identified in the Agreement.

3.2. Characterization of Requests. Upon receiving a request from Customer Contact, Google will determine whether the request is a Severity 0 Request, Severity 1 Request, Severity 2 Request, or a Feature Request. Google reserves the right to determine in its sole discretion the characterization of a support request within these Guidelines.

3.3. Remote Maintenance. Google may conduct regular maintenance of the Appliance Hardware or Software no more than once per quarter. The date(s) for completion of such maintenance shall be scheduled by Google and approved by Customer at least two (2) weeks in advance. Customer shall provide remote access according to Section 4.5. This does not apply to customers who have purchased the Disconnected Support option.

3.4. On-Site Maintenance. Google reserves the right to perform on-site maintenance of the Appliance, as deemed necessary by Google. In order to receive further Technical Support Services, Customer shall respond within two (2) Business Days to any request for access by Google Technical Support Personnel, and shall arrange for any such site visit(s) at the parties' mutual convenience.

3.5. GES Site. If the URL for the GES Site or any procedure associated with the GES Site is changed in the future, Google will notify Customer Contacts via e-mail in advance of any such change.

3.6. Support Hours. Google shall only process Requests during Hours of Operation. Any Requests received outside of Hours of Operation shall be logged and processed at the beginning of the next Business Day.

3.7. Software Subscription Service. Customer shall be entitled to receive Updates to the Software during the Support Period. Software Updates will be made available on the GES Site. Google Technical Support Personnel may notify Customer Contacts via e-mail when Updates to the Appliance become available.

3.8. Hardware Support Service. Google reserves the right to supply a replacement Appliance as part of an Appliance Update. Any Requests which are related to the Hardware will be handled as follows:

3.8.1. Replacement. If a replacement Appliance is provided by Google, Google will ship to Customer a replacement Appliance of at least the same hardware configuration.

3.8.2. Expedited Replacement. If a replacement Appliance is provided by Google, and the Customer is experiencing Serving Downtime, Google will ship to Customer a replacement Appliance using an expedited courier or other commercial shipping method.

3.8.3. Hardware Issue. When Google Technical Support Personnel determine that any bug, error, or malfunction is caused by Hardware failure, Google will determine whether a replacement Appliance will be provided or whether Google Technical Support Personnel will repair the Appliance.

3.8.4. Repair. If repairs to the Hardware are required, Google Technical Support Personnel will arrange a visit to the Customer site. The visit will be scheduled at the earliest mutual convenience of both parties.

3.8.5. Hardware Damage. Normal wear and tear on the Hardware is not included in Technical Support Services. Any Requests submitted due to damage to the Hardware other than damage that occurs during shipment shall not be covered by Technical Support Services.

#### 4. Customer Responsibilities

4.1. Point of Contact. Customer Contacts are expected to provide first-level support to the end-users of Customer's Appliance(s). Google Support Services are second-level support only. Prior to making a request to Google, Customer Contacts shall make reasonable efforts to resolve the issue using the Documentation or FAQs on the GES Site. All Requests shall be submitted to Google Technical Support Personnel via the GES Site.

4.2. Support Contacts. If Customer wishes to change its designated Customer Contacts, it shall notify Google via e-mail at least five (5) Business Days prior to such change.

4.3. Diagnostic Information. When making each Request, Customer shall provide diagnostic information including but not limited to (i) providing unique appliance identification number (e.g. GIX/GID/GED/GEX) (ii) describing the problem, the configuration, and Customer's network; (iii) providing data or logs; and (iv) communicating further via e-mail or telephone to answer questions and assist Google Technical Support Personnel as appropriate.

4.4. Internet Access. Customer Contacts may be required to download Updates from the GES Site located on the Internet in order to provide a Fix to resolve a Request.

4.5. Remote Access. Customer shall provide a dial-up connection via an analog phone line or an SSH connection. Customer shall set up this connection as part of the initial installation of the Appliance. If Google determines that remote access is required to resolve a Request, Google Technical Support Personnel shall connect to the Appliance via the modem provided by Google upon request for remote access to the Appliance or an SSH connection. Google Technical Support Personnel will not access the Appliance via any other means. This does not apply to customers who have purchased the Disconnected Support option, defined in Addendum C.

4.6. Physical Access to the Appliance at the Customer site. If Google determines, in its sole discretion, physical access to the Appliance is necessary to resolve a Request, Google shall request physical access to the Appliance. For GB-5005 and GB-8008, physical access requires 24" clearance on both sides of the Appliance. Google shall make commercially reasonable efforts to schedule such a site visit at the earliest mutual convenience of both parties. If Customer Contact cannot provide access within ten (10) days Business Days of Google's request, the Google Technical Support Personnel will close the Request. Customer agrees to provide Google with full and timely physical access to the Search Appliance. If physical access is necessitated due to Customer's election of Disconnected Support, as defined in Addendum C, Customer will be responsible for all costs associated with any site visits, including and not limited to materials, actual travel, and out-of-pocket expenses.

4.7. Installation of Updates. Customer shall use the current version, or any of the two immediately prior versions of the Software available for its Appliance platform. Only the current version and two immediately prior versions for each Hardware platform will be supported. If Customer does not install a Software Update, Google Technical Support Personnel shall not respond to Requests or provide subsequent Updates until the Appliance has been updated to a supported version. In the event that a Fix requires installation of the current software version, Customer shall use that version.

4.8. Return of Replaced Unit. If Google ships a replacement Appliance to Customer for any reason, Customer must ship the replaced Appliance back to Google for receipt by Google within forty-five (45) days of Google's shipment to Customer of the replacement unit following instructions for return set forth on the GES Site. If Customer and Google mutually agree that Customer will not return the replaced unit in the Agreement, Customer shall follow the Hardware Replacement Procedure for Non-Return Units in the Disconnected Support option (Addendum C).

#### 5. Other Services

Any support services not included in these Guidelines must be purchased from Google, subject to availability and pursuant to a separate agreement.

#### Addendum A: Standard Support

Standard Support consists of:

- GES Site access
- Software Subscription Service (Software Update)
- Hardware Support Service
- Standard Response
- Installation Services for 5005 and 8008 (if applicable)

**Standard Response**

1. Severity 0 Requests. Google Enterprise Support will respond within two business hours. For Severity 1 and 2 requests, Google Enterprise Support will respond within one business day. For all other requests, Google Enterprise Support will respond within two business days.
2. Severity 1 Requests. Google will make reasonable commercial effort to respond to Severity 1 Requests by the next Business Day. Google may require remote access to conduct diagnostic tests to determine how the Severity 1 Requests may be resolved, and shall make commercially reasonable efforts to provide a Fix for the Severity 1 Request.
3. Severity 2 Requests. Google will make reasonable commercial effort to respond to Severity 2 Requests by the next Business Day. Google shall conduct diagnostic tests to determine how the Severity 2 Request shall be resolved, and shall make commercially reasonable efforts to provide a Fix for each Severity 2 Request.

**Installation Services for 5005 and 8008 Appliances**

Installation of the Appliance shall be conducted solely by Google Technical Support Personnel or Google's authorized representatives. Self installation by Customer of 5005 and 8008 Appliances may be done with Google's prior approval and assistance. Google shall provide up to one (1) day of on-site support, including the knowledge transfer session described below, to assist in the installation of the Appliance. Current information on technical details and procedures regarding the Appliance shall be available at the GES Site. In the event the Appliance is installed by any other means than as set forth herein, or Customer transfers the Appliance to a location different from the original installation, Customer shall be liable for any recertification costs and additional support costs to continue receiving Technical Support Services. The fees for such costs will be billed at Google's then current rates. That is, Customer shall pay Google for all of the time spent performing such additional support, plus materials, actual travel, out-of-pocket expenses incurred, and taxes, which are not included in the rates and will be invoiced separately, if applicable.

As part of the installation services, Google shall provide up to four (4) hours of knowledge transfer at a location in the proximate locale of the installation site (e.g., within 10 miles of the installation location). The knowledge transfer session will be provided either immediately preceding or immediately following the installation.

**Addendum B: Premium Support**

Premium Support consists of:

- GES Site access
- Software Subscription Service (Software Update)
- Hardware Support Service
- Premium Response
- 24x7 Pager Support for Severity 0 Request

- Installation Services for 5005 and 8008
- Transfer of Knowledge Services for 5005 and 8008
- VPN Connect

#### **Premium Response**

1. Severity 0 Requests. Google will make reasonable commercial effort to respond to Severity 0 Requests within one (1) hour during Hours of Telephone Support if the Request is reported to Google Enterprise Support Telephone or within two (2) hours during Hours of Operation for all other Requests. Google may require remote access to conduct diagnostic tests to determine how the Severity 0 Requests may be resolved.

2. Severity 1 Requests. Google will make reasonable commercial effort to respond to Severity 1 Requests within one (1) Business Day. Google may require remote access to conduct diagnostic tests to determine how the Severity 1 Requests may be resolved, and shall make commercially reasonable effort to provide a Fix for the Severity 1 Request.

3. Severity 2 Requests. Google will make reasonable commercial effort to respond to Severity 2 Requests within one (1) Business Day. Google shall conduct diagnostic tests to determine how the Severity 2 Request may be resolved, and shall make commercially reasonable efforts to provide a Fix for each Severity 2 Request.

4. 24x7 Pager for Severity 0 Requests only. 24x7 Pager for Severity 0 Requests service requires either software or hardware VPN. This service can only be used for Severity 0 Requests. Google will make a reasonable commercial effort to respond to Severity 0 Request pages within thirty (30) minutes.

#### **Installation Services for 5005 and 8008 Appliances**

Installation of the Appliance shall be conducted solely by Google Technical Support Personnel or Google's authorized representatives. Self installation by Customer of 5005 and 8008 Appliances may be done with Google's prior approval and assistance. Google shall provide up to one (1) day of on-site support, including the knowledge transfer session described below, to assist in the installation of the Appliance. Current information on technical details and procedures regarding the Appliance shall be available at the GES Site. In the event the Appliance is installed by any other means than as set forth herein, or Customer transfers the Appliance to a location different from the original installation, Customer shall be liable for any recertification costs and additional support costs to continue receiving Technical Support Services. The fees for such costs will be billed at Google's then current rates. That is, Customer shall pay Google for all of the time spent performing such additional support, plus materials, actual travel, out-of-pocket expenses incurred, and taxes, which are not included in the rates and will be invoiced separately, if applicable.

As part of the installation services, Google shall provide up to four (4) hours of knowledge transfer at a location in the proximate locale of the installation site (e.g., within 10 miles of the installation location). The knowledge transfer session will be provided either immediately preceding or immediately following the installation.

#### **VPN Connect**

Software VPN support requires Customer-purchased and Google-approved software with 24x7 accessibility to the Appliance.

#### **Addendum C: Optional Support Offerings**

Customer may elect to purchase additional Google Technical Support offerings, which are described below.

#### **VPN Connect**

VPN Connect offers an alternate means of 24x7 Remote Support. Customer may select either of these options.

- **Dedicated VPN Support.** Dedicated VPN support requires Customer-purchased and Google-approved hardware with 24x7 accessibility to the Appliance.
- **Software VPN Support.** Software VPN support requires Customer-purchased and Google-approved software with 24x7 accessibility to the Appliance.

#### **Desktop Connect**

Another alternative to modem or SSH access, Desktop Connect offers remote access using GoToAssist™ made available from Citrix Systems, Inc. The Customer Contact will be directed to a web portal to enter a Request. The Request is then queued for the next Google Technical Support Representative. With the Support Contact's permission, the GoToAssist thin-client is downloaded to the Customer Contact's device while the Customer Contact is in the web queue. The Google Technical Support Representative will then be able to begin a remote-support session with the Support Contact.

#### **Disconnected Support**

Under Disconnected Support, Google shall not have remote access to the Search Appliance for technical support services during the Term of the Agreement, unless the remote access is requested by Customer. Google will use commercially reasonable efforts to provide support via e-mail and online support methods only. Under circumstances when Google determines, in its sole discretion, that an on-site visit is required in order to resolve Customer's Support Request ("Onsite Support"), Customer may then request that on-site Support be arranged. All on-site support will be scheduled and determined by Google, subject to Google's resource availability and Google's standard terms for such services. Customer will be responsible for all costs associated for on-site support at Google's then current rates in effect. For on-site support, Customer agrees to provide Google with full and timely access to the Search Appliance at reasonable times. Failure to provide such access will be at Customer's own risk and without liability to Google.

Under the Disconnected Support model, any Hardware replacement will be handled via the Hardware Replacement Procedure for Non-Return Units as follows:

Should Google determine the Hardware needs to be replaced, Customer will erase all Software from the Search Appliance which Customer has in its possession in compliance with the removal process as instructed by Google. Customer will provide certification (in the form requested by Google) that such process has been properly completed within thirty (30) Business Days of Google's notice to Customer that the Hardware will be replaced. Customer may also be required to destroy the hard drive of the predecessor Search Appliance. However, given the performance of the predecessor Search Appliance, Google may request that a Google engineer be permitted to observe the interior of the predecessor Search Appliance to determine which components may have caused the performance experienced by Customer and then to observe the physical destruction of the hard drive contained therein. Customer must refrain from making any use of the predecessor Search Appliance and if for any reason Customer uses the predecessor Search Appliance, such use shall be at Customer's sole risk.

Google will ship to Customer a replacement Search Appliance with a temporary use license only. Upon Google's receipt of certification that all Software has been erased (as set forth in this section above), Google will issue Customer a license key that enables the Software for use with the replacement Search Appliance for the remaining Term of the license granted pursuant to the Agreement. If it is determined by Google, in its sole discretion, that replacement of the Hardware is due to circumstances not associated with standard use of the Search Appliance in conformance with the terms of the Agreement, Customer will be responsible for all costs of the replacement Hardware, as well as, all costs associated for support and destruction of the existing Hardware in Customer's possession. All such costs shall be at Google's then current rates in effect.